

ADDING BMC CHAPTER 23D.52 (R-SMU RESIDENTIAL SOUTHSIDE MIXED USE DISTRICT PROVISIONS)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23D.52 is added to read as follows:

**Chapter 23D.52
R-SMU RESIDENTIAL SOUTHSIDE MIXED USE DISTRICT PROVISIONS**

Sections:

23D.52.010	Applicability of Regulations
23D.52.020	Purposes
23D.52.030	Uses Permitted
23D.52.040	Special Provisions -- Design Review
23D.52.050	Special Provisions: Development Standards for Accessory Dwelling Units
23D.52.060	Reserved
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23D.52.080	Parking -- Number of Spaces
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23D.52.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-SMU Districts. In addition, the general provisions in Sub-title 23C shall apply.

23D.52.020 Purposes

The purposes of the Southside Mixed Use Residential (R-SMU) Districts are to:

- A. Implement General Plan and Southside Plan policy by encouraging high density, multi-story residential development close to major shopping, transportation and employment centers;
- B. Make housing available for persons who desire a convenient location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as apartments and hotels, which will provide housing opportunities for transient or seasonal residents;
- E. Permit the construction of institutional, neighborhood serving retail, and office uses when such will not be detrimental to the immediate neighborhood.
- F. Provide locations for relocation of office space from other locations in the Southside Plan area;
- G. Encourage the construction of new housing and mixed-use development on vacant properties and surface parking lots;
- H. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development; and
- I. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.

23D.52.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

Table 23D.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Child Care Centers	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Clubs, Lodges	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Community Care Facilities/Homes		
Changes of Use	ZC	Subject to parking requirements. See Section 23D.40.080
New Construction	UP(PH)	
Community Centers	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-SMU Standards	UP(PH)	See Section 23D.52.070 for restrictions.
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	
Major Residential Additions	AUP	
Group Living Accommodations subject to R-SMU standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking

		requirements. See Section 23D.52.080.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
Accessory Dwelling Units in compliance with applicable standards	ZC	Subject to Section 23D.52.050
Accessory Dwelling Unit which involves a Major Residential Addition (500 sq. ft. or more)	AUP	Denial subject to Section 23D.52.090.E.
Accessory Dwelling Unit in a detached Accessory Building which does not conform to	AUP	In no case shall side or rear setbacks be allowed to be less than four feet, or the

the setbacks in Section 23D.52.070		front setback to be less than 15 feet. Subject to making the finding in Section 23D.52.090.A
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the height limit in Section 23D.52.050.E.2	AUP	Subject to making applicable findings in Section 23D.52.090
Child Care, Family Day Care Small Family Day Care Homes of eight or fewer children Large Family Day Care Homes of nine to 14 children	ZC AUP	
Fences Six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks
Home Occupations Low Impact Moderate Impact, teaching-related Moderate Impact	ZC AUP UP(PH)	If the requirements of Section 23C.16.020 are met Subject to the requirements of Section 23C.16.030.A Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
Uses Permitted in Commercial Districts		
Alcoholic Beverage Retail Sales	Prohibited	

Alcoholic Beverage Service (no Bars, Cocktail Lounges, or Taverns allowed)	UP(PH)	Service of alcoholic beverages may be approved only for Full Service Restaurants
Food Products Stores	UP(PH)	Limited to 3,000 square feet in size.
Food Service Establishments	UP(PH)	Limited to 1,200 square feet in size
Hotels	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to 23D.52.070.H
Offices	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Parking Lots	Prohibited	
Parking Structures	UP(PH)	Subject to Section 23D.12.090
All Personal and Household Services, except those listed below:	ZC	Subject to the use limitations of Section 23E.40.060 and parking regulations of 23E.52.080.
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Video Tape/Disk Rental Stores	UP(PH)	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 50% of the subject property area, and located within the main building.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or

		natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Legend: ZC -- Zoning Certificate AUP -- Administrative Use Permit	UP(PH) -- Use Permit, public hearing required Prohibited -- Use not permitted	

23D.52.040 Special Provisions: Development Standards for Accessory Dwelling Units

A. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this section if all requirements of the R-SMU District and other applicable requirements are met. The Zoning Officer may approve an AUP for cases not in compliance, as set forth in Section 23D.52.030.

B. Accessory Dwelling Units shall conform to the following standards in all cases:

1. The gross floor area of an Accessory Dwelling Unit shall contain no more than 25% of the gross floor area of the main dwelling in existence prior to the construction of the Accessory Dwelling Unit, except that if the house is less than 1,200 sq. ft., an Accessory Dwelling Unit of 300 sq. ft. will be allowed.

2. The gross floor area of an Accessory Dwelling Unit shall be no less than 300 square feet but no greater than 640 square feet.

3. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.

4. Each application shall be determined to be located on a lot with access from a roadway that meets the fire apparatus access road requirements of the California Fire Code Section 902.2.2.1 (as it may be amended or renumbered from time to time), to be determined prior to either issuance of a Zoning Certificate or approval of an AUP.

5. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found in non-compliance with this requirement.

C. An Accessory Dwelling Unit may be converted from a portion of the floor area of a pre-existing main Dwelling Unit subject to the following:

1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.

D. An Accessory Dwelling Unit may be created through a building addition to an existing main dwelling subject to the following:

1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.

2. The subject lot shall have an area not less than 4,500 square feet.

E. An Accessory Dwelling Unit may be created in a new or existing detached Accessory Building subject to the following:

1. The subject lot shall have an area not less than 4,500 square feet.

2. An Accessory Dwelling Unit located in an Accessory Building shall not exceed 12 feet in average height.

3. The detached accessory building shall conform to the setbacks in Section 23D.52.070.C to be allowed by right (with issuance of a Zoning Certificate). Any reduction from the setbacks is subject to review and approval of an Administrative Use Permit, but in no case shall the setbacks be reduced below four feet on side and rear setbacks, or 15 feet on the front setback.

23D.52.050 Special Provisions -- Design Review

All Commercial, Mixed Use and Community and Institutional projects shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12.

23D.52.060 Commercial Additions and Conversions of Existing Buildings – Requirements for Use Permits

A. Commercial gross floor area shall not be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings, additions to existing buildings or the installation of new floor or Mezzanine levels within or onto existing buildings.

B. Existing buildings used for commercial activities shall not be converted unless an Administrative Use Permit is obtained.

C. Commercial structures are also subject to the development standards set forth in Section 23D.52.070.

23D.52.070 Development Standards

A. No lot of less than 5,000 square feet may be created.

B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 175 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 175 square feet, but not less than 100 square feet in area.

1. The Board may approve a Use Permit to increase the density of a Group Living Accommodation use if it makes the following findings:

a. At least 50% of the total building floor area is designated for residential use;

b. The increase in density will not be detrimental to the immediate neighborhood; and

c. The project meets the purposes of the District.

C. The height for a Main Building shall satisfy the following requirements:

1. The maximum height shall be four stories and 60 feet, except as otherwise provided in paragraphs 2 and 3 below.

2. Within the portions of the District located east of Telegraph Avenue and/or more than 130 feet south of Bancroft Way, the Board may approve a Use Permit to increase a project's maximum height to five stories and 65 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designated for residential use; and
 - b. The project meets the purposes of the District.
 3. Within the portion of the District located west of Telegraph Avenue and within 130 feet from Bancroft Way, the Zoning Board may approve a Use Permit to increase a project's maximum height to five stories and 75 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designated for residential use; and
 - b. The project meets the purposes of the District.
- D. The height for a Residential Addition shall satisfy the following requirements:
1. The maximum height shall be 16 feet, except as otherwise provided in paragraph 2 below.
 2. The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 16 feet in average height, up to the district limit.
- E. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

	Yard location					Building separation**
	Story	Front*	Rear**	Side	Street side*	
Main Buildings with Dwelling Units or Group Living Accommodations or located north of Durant Avenue	1st	10	10	4	6	8
	2nd	10	10	4	8	12
	3rd	10	10	6	10	16
	4th	10	17	8	10	20
	5th	10	19	10	10	24
All other Main Buildings	1st	15	15	4	6	8
	2nd	15	15	4	8	12
	3rd	15	15	6	10	16
	4th	15	17	8	12	20

* Depending on context. See Section 23D.52.070.E.1.
 ** See Sections 23D.52.070.E.2 and .3 for yard and building separation reductions.

1. For a Main Building that contains Dwelling Units or Group Living Accommodations or is located north of Durant Avenue, the setbacks may be reduced to as little as 0 feet if this is approved through an Administrative Use Permit with a finding that the reduction is appropriate given the setbacks and architectural design of surrounding buildings.
2. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
3. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.

F. Maximum lot coverage may not exceed the following coverage percentages:

		Lot Coverage Area (%)	
Main Buildings with Dwelling Units or Group Living Accommodations, or	Main Building Height (stories)	Interior and Through Lots	Corner Lots

located north of Durant Ave.			
	1 or 2	55	60
	3	50	55
	4	45	50
	5	40	45
All other Main Buildings	1 or 2	45	50
	3	40	45
	4	35	40

1. For a Main Building that contains Dwelling Units or Group Living Accommodations or is located north of Durant Avenue, the lot coverage may be increased up to 100% if this is approved through an Administrative Use Permit with a finding that the increase is appropriate given the setbacks and architectural design of surrounding buildings.

G. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 40 square feet; for each person who resides in a Group Living Accommodation use, 20 square feet.

H. Any Mixed Use building (residential and commercial) shall satisfy all of the all of the standards and requirements of this District, including the density limitations of the R-SMU District and as follows:

1. Each Mixed Use building shall contain at least 40 square feet of Usable Open Space per Dwelling Unit for the residential use portion.

I. Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP).

23D.52.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of Chapter 23D.12 and this Section.

1. No Off-Street Parking Spaces shall be required for new Dwelling Units or Group Living Accommodation rooms, or for Accessory Dwelling Units.

2. For non-residential uses and for Main Buildings with no Dwelling Units or Group Living Accommodations, Off-Street Parking Spaces shall be provided in accordance with the following requirements:

- a. The minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area of commercial space. Uses listed in Table 23D.52.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area or changes of use.

Table 23D.52.080	
Parking Required	
Use	Number of spaces
Hotels	One per each three guest/sleeping rooms or suites

	plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

b. Parking requirements for changes in use of existing floor area where the new use has a higher parking standard than the existing use may be modified as set forth in Section 23E.28.130.

c. Other uses requiring Use Permits, including but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-Street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specific standards for other uses.

3. For non-residential uses in Main Buildings that include Dwelling Units or Group Living Accommodations, parking requirements may be waived if approved through an Administrative Use Permit with a finding that the parking reduction is consistent with the purposes of the District.

4. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.

5. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of new commercial space, and in accordance with the requirements of Section 23E.28.070.

B. Occupants of Dwelling Units and Group Living Accommodation rooms constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Section 14.72 of the BMC.

C. Any new construction which results in the creation of 10,000 square feet of new or additional non-residential floor space shall satisfy the loading space requirements of Chapter 23E.32 as follows:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and

2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet.

D. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted.

23D.52.090 Findings

A. In order to approve any Permit under this Chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make any findings required by the following subdivisions to the extent applicable.

B. Administrative Permits to reduce front or front or street side yards or to increase in lot coverage may be considered only for Main Buildings that contain Dwelling Units or Group Living Accommodations or that are located north of Durant Avenue. To approve an Administrative Use Permit for the setback reductions or to increase lot coverage subject to 23D.52.070, the Zoning Officer or Board must find that the exception is appropriate given the setbacks and architectural design of surrounding buildings.

C. To approve a parking waiver for a non-residential use in a building with residential uses, the Zoning Officer or Board must find that the parking reduction would be consistent with the purposes of the District.

D. To approve a Permit to reduce existing parking, the Zoning Officer or Board must find that the parking reduction would be consistent with the purposes of the District and meets the findings of Section 23E.28.140.

E. To deny a Use Permit for a major residential addition or residential addition subject to 23D.52.070, the Zoning Officer or Board must find that the addition would unreasonably obstruct sunlight, air or views.

F. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.